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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 635

[Docket No. 110819516-4534-01]

RIN 0648-BB02

Atlantic Highly Migratory Species; Smoothhound Shark and Atlantic Shark Management Measures

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Proposed rule; request for comments.

SUMMARY: This proposed rule to implement draft Amendment 9 to the 2006 Consolidated Highly Migratory Species (HMS) Fishery Management Plan (FMP) considers management measures in the smoothhound and shark fisheries. In addition to the measures in draft Amendment 9, this rulemaking would establish an effective date for previously-adopted shark management measures finalized in Amendment 3 to the 2006 Consolidated HMS FMP (Amendment 3) and the 2011 HMS Trawl Rule that were delayed, and proposes to increase the smoothhound shark annual quota that was finalized in Amendment 3, using updated landings data. It also proposes to implement the smoothhound shark-specific requirements of the 2012 Shark Biological Opinion (BiOp), and considers modifying current regulations related to the use of Vessel Monitoring Systems (VMS) by Atlantic shark fishermen using gillnet gear. For purposes of this rulemaking, the term “smoothhound sharks” collectively refers to smooth dogfish (Mustelus canis), Florida smoothhound (M. norrisi), Gulf smoothhound (M.

sinusmexicanus), small eye smoothhound (M. higmani), and any other Mustelus spp. that might be found in U.S. waters of the Atlantic, Gulf of Mexico, and Caribbean, collectively. Finally, this action considers the implementation of the smooth dogfish-specific provisions in the Shark Conservation Act of 2010 (the “SCA”). The SCA requires that all sharks landed from federal waters in the United States be landed with their fins naturally attached to the carcass, but includes a limited exception for smooth dogfish. Throughout this document, the term “fins” includes both the tail and the fins of the shark. For the federal Atlantic shark fisheries, current HMS regulations require federally-permitted shark fishermen to land all sharks with fins naturally attached to the carcass. The SCA’s fins-attached requirement is being addressed nationwide through a separate ongoing rulemaking. Thus, regarding the SCA, this rulemaking addresses only the provision that allows fin removal at sea of Atlantic smooth dogfish.

DATES: Written comments must be received on or before November 14, 2014. NMFS will announce the dates and locations of public hearings in a future Federal Register document.

ADDRESSES:

You may submit comments on this document, identified by NOAA-NMFS-2014-0100, by any one of the following methods:

- **Electronic Submission:** Submit all electronic public comments via the Federal e-Rulemaking Portal. Go to www.regulations.gov/#!docketDetail;D=NOAA-NMFS-2014-0100, click the “Comment Now” icon, complete the required fields, and enter or attach your comments.
- **Mail:** Submit written comments to Margo Schulze-Haugen, NMFS/SF1, 1315 East West Highway, National Marine Fisheries Service, SSMC3, Silver Spring, MD 20910.

Instructions: Please include the identifier NOAA-NMFS-2014-0100 when submitting comments. Comments sent by any other method, to any other address or individual, or received after the close of the comment period, may not be considered by NMFS. All comments received are a part of the public record and generally will be posted for public viewing on www.regulations.gov without change. All personal identifying information (e.g., name, address), confidential business information, or otherwise sensitive information submitted voluntarily by the sender will be publicly accessible. NMFS will accept anonymous comments (enter "N/A" in the required fields if you wish to remain anonymous). Attachments to electronic comments will be accepted in Microsoft Word, Excel, or Adobe PDF file formats only. Written comments regarding the burden-hour estimates or other aspects of the collection-of-information requirements contained in this proposed rule may be submitted to the Atlantic Highly Migratory Species Management Division by e-mail to OIRA_Submission@omb.eop.gov, or fax to 202-395-7285.

Copies of the supporting documents—including the draft Environmental Assessment (EA), Regulatory Impact Review (RIR), Initial Regulatory Flexibility Analysis (IRFA), and the 2006 Consolidated Atlantic HMS FMP are available from the HMS website at <http://www.nmfs.noaa.gov/sfa/hms/> or by contacting Steve Durkee at 202-670-6637.

FOR FURTHER INFORMATION CONTACT: LeAnn Hogan or Karyl Brewster-Geisz by phone: 301-427-8503 or Steve Durkee by phone: 202-670-6637, or by fax: 301-713-1917.

SUPPLEMENTARY INFORMATION:

Atlantic sharks, including smoothhound sharks, are managed under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), and the authority to issue regulations has been delegated from the Secretary to the Assistant

Administrator (AA) for Fisheries, NOAA. On October 2, 2006, NMFS published in the Federal Register (71 FR 58058) final regulations, effective November 1, 2006, implementing the 2006 Consolidated HMS FMP, which details management measures for Atlantic HMS fisheries. The implementing regulations for the 2006 Consolidated HMS FMP and its amendments are at 50 CFR part 635. This proposed rule addresses implementation of Amendment 9 to the 2006 Consolidated HMS FMP.

Except for restrictions on finning, smoothhound sharks were not managed by the Federal government before 2010. In the 1999 FMP for Atlantic Tunas, Swordfish, and Sharks (1999 FMP), NMFS included smoothhound sharks in a Federal fishery management unit that included deep water and other sharks to prevent finning of all of these species. These species of smoothhound sharks were removed from the fishery management unit in the 2003 when NMFS amended the 1999 FMP in Amendment 1, since these sharks became protected from finning under the Shark Finning Prohibition Act (67 FR 6124, February 11, 2002). In 2008, the Atlantic States Marine Fisheries Commission (ASMFC) adopted management measures for smoothhound sharks in state waters; the ASMFC measures became effective in January 2010.

In 2010, through Amendment 3, NMFS determined that smoothhound sharks were in need of federal conservation and management measures. NMFS included smoothhound sharks within the HMS-managed stocks because of the wide geographic distribution and range of smoothhound sharks and because NMFS has management authority over HMS, including “oceanic sharks,” under the Magnuson-Stevens Act. Details about NMFS’ authority and decision to manage smoothhound sharks can be found in the Final Environmental Impact Statement (EIS) for Amendment 3. At that time, “smoothhound sharks” referred to a species complex consisting of smooth dogfish and Florida smoothhounds (75 FR 30484, June 1, 2010).

The final rule implementing Amendment 3 published in June 2010 and delayed the effective date of the smoothhound shark management measures until approximately 2012, pending approval for the data collection under the Paperwork Reduction Act (PRA) by the Office of Management and Budget (OMB). NMFS delayed the effective date also to provide time to implement a permit requirement, for NMFS to complete a BiOp under section 7 of the ESA, and for affected fishermen to change business practices, particularly as they related to keeping the fins attached to the carcass through offloading (June 1, 2010, 75 FR 30484). OMB approved the PRA data collection in May of 2011, and NMFS met informally with smoothhound shark fishermen along the east coast in the fall of 2010.

In January 2011, the President signed the SCA (P.L. 111-348). This legislation requires that all sharks, except for smooth dogfish (Mustelus canis), landed from federal waters in the United States be landed with their fins and tail naturally attached to the carcass. It included, however, a limited exception for smooth dogfish (Mustelus canis), stating that the amendments made by the SCA do not apply to an “individual engaged in commercial fishing for smooth dogfish (Mustelus canis) in that area of the waters of the United States located shoreward of a line drawn in such a manner that each point on it is 50 nautical miles from the baseline of a State from which the territorial sea is measured, if the individual holds a valid State commercial fishing license, unless the total weight of smooth dogfish fins landed or found on board a vessel to which this subsection applies exceeds 12 percent of the total weight of smooth dogfish carcasses landed or found on board.” Pub. L. 111-348, section 103(b)(1). Throughout this document, the term “fins” includes both the tail and the fins of the shark.

Also, in 2011, NMFS published a final rule regarding trawl gear (August 10, 2011, 76 FR 49368). The HMS trawl rule, among other things, allowed for the retention of smoothhound

sharks caught incidentally with trawl gear, provided that total smoothhound shark catch on board or offloaded does not exceed 25 percent of the total catch by weight.

In November 2011, NMFS published a final rule (76 FR 70064, November 10, 2011) that delayed the effective date for all smoothhound shark management measures in both Amendment 3 and the 2011 trawl rule indefinitely to provide time for NMFS to consider the smooth dogfish - specific provisions in the SCA, and for NMFS to finalize a Biological Opinion on the federal actions in Amendment 3, among other things.

Since that time, the 2012 Atlantic Shark Biological Opinion (2012 Shark BiOp) on Federal actions in Amendment 3 has been completed. Except for consideration of the smooth dogfish-specific measures in the SCA, all reasons for delaying implementation of Amendment 3 and the 2011 HMS trawl gear rule have been addressed and completed. Thus, NMFS is ready to make effective previously-finalized smoothhound shark measures from Amendment 3 and the 2011 HMS trawl gear rule. In addition, new landings information and data about the smoothhound shark fishery has become available. Draft Amendment 9 considers that new information and data, and considers resulting adjustments to the quota based on that information, as well as considering implementation of smooth dogfish-specific provisions of the SCA. Draft Amendment 9 is amending the HMS FMP because of the significant modification to the Atlantic smoothhound shark quota based upon updated landings information.

During the development of Amendment 3 in 2009, molecular and morphological research indicated that Florida smoothhound (Mustelus norrisi) had been historically misclassified as a separate species from smooth dogfish (M. canis). Additionally, the Southeast Fisheries Science Center (SEFSC) advised that there were insufficient data at the time to separate smooth dogfish and Florida smoothhound into two separate species, and that they should be treated as a single

stock until scientific evidence indicated otherwise. Accordingly, in Amendment 3, NMFS decided to manage both Florida smoothhound sharks and smooth dogfish together as “smoothhound sharks” because of this taxonomic correction and based upon SEFSC advice. Since the finalization of Amendment 3 in 2010, additional scientific information has become available from the SEFSC regarding species identification of smoothhound sharks. This updated scientific data shows that M. norrisi (Florida smoothhound), M. canis (smooth dogfish) and M. sinusmexicanus (Gulf smoothhound) are separate species, and that there may be additional smoothhound species in the Gulf of Mexico.

The majority of the landings in the commercial smoothhound fishery currently occur in the mid-Atlantic region. Scientific evidence indicates that smooth dogfish are almost exclusively the species found in this area and along the coast throughout the Atlantic region; however, there have been a very limited number of Florida smoothhounds reported off of southern Florida. In the Gulf of Mexico region, all three Mustelus species are commonly found off Florida in the Gulf of Mexico. The best available scientific information collected for the upcoming SEDAR 39 stock assessment for smoothhound sharks indicates that smooth dogfish are likely the only smoothhound shark species found along the Atlantic coast. In the Gulf of Mexico, however, there are at least three different smoothhound species, with no practical way to distinguish among them. For more information, see Draft EA for Amendment 9.

Identification between these species is difficult, and all three species’ ranges overlap in the Gulf of Mexico. The most commonly used macroscopically visible external characteristics, such as dermal denticle and labial furrow differences, cannot be reliably used for species identification. Some limited success has been achieved by using other external characteristics, such as hyomandibular pore distribution, but misidentification is still common, especially for

juvenile specimens. Data examined for the ongoing SEDAR 39 smoothhound stock assessment found that during shark surveys, Florida smoothhound was only correctly identified 40 percent of the time and Gulf smoothhound was only correctly identified 64 percent of the time, with the greatest identification difficulty occurring between Gulf smoothhound and smooth dogfish. Thus, it is unlikely that shark fishermen and enforcement officers would be able to tell these three species of smoothhound sharks apart without genetic analyses to differentiate between the three species. For more information, see Draft EA for Amendment 9.

Because of the overlap in range between the different species and the extreme difficulty in distinguishing among the three species, NMFS will continue to group all the smoothhound species (all Mustelus species within the U.S. EEZ of the Atlantic, Gulf of Mexico, and Caribbean) together within the term “smoothhound sharks” for management purposes and will manage them as a complex. As a result, this proposed rule expands the definition of smoothhound sharks that NMFS previously adopted in Amendment 3 to an inclusive reference to Mustelus species. The SCA, however, explicitly limits the fin-removal exception to commercial fishing for smooth dogfish, identifying the species by scientific name. Given the above issues, NMFS examines two alternatives for applying the exception for smooth dogfish: one that applies the exception along the Atlantic Coast and the Florida Coast in the Gulf of Mexico, and a second that would apply the exception along the Atlantic Coast but not the Florida Coast in the Gulf of Mexico. Given the challenges posed by correctly identifying different smoothhound shark species, the specificity of the SCA’s application, and the presence of multiple smoothhound shark species in the Gulf of Mexico, NMFS is requesting public comment on alternatives for implementing and enforcing the SCA smooth dogfish exception.

In addition to proposing to implement exceptions found in the SCA that specifically apply to smooth dogfish, this rule would also establish an effective date for previously-adopted shark management measures finalized in Amendment 3 (June 1, 2010, 75 FR 30483) and the 2011 HMS trawl rule (August 10, 2011; 76 FR 49368). These measures include increasing the previously-adopted commercial quota for smoothhound sharks based on updated scientific information and data, implementing limited exceptions from certain provisions of the SCA that specifically apply to smooth dogfish, implementing Term and Condition 4 of the 2012 Shark BiOp, which required either net checks or soak time restrictions in the Atlantic shark gillnet fisheries, and reducing the VMS requirements for shark gillnet fishermen.

NMFS prepared a draft EA, RIR, and an IRFA, which present and analyze anticipated environmental, social, and economic impacts of each alternative contained in this proposed rule. A summary of the alternatives considered and related analyses are provided below. The complete list of alternatives and related analyses are provided in the draft EA/RIR/IRFA. A copy of the draft EA/RIR/IRFA prepared for this proposed rule is available from NMFS (see ADDRESSES).

Establishing an Effective Date for Previously-Adopted Shark Management Measures Finalized in Amendment 3 to the 2006 Consolidated HMS FMP and in the 2011 HMS Trawl Rule

Amendment 3 finalized certain conservation and management measures for smoothhound sharks. As described above, implementation of these measures was delayed indefinitely. This action will implement an effective date for the previously-delayed Amendment 3 management measures for smoothhound sharks, including:

- A research set-aside quota;

- An accountability measure (AM), which closes the fishery when smoothhound shark landings reach, or are expected to reach, 80 percent of the quota;
- A requirement for a dealer permit to purchase smoothhound sharks;
- A requirement for dealers to report smoothhound shark purchases;
- A smoothhound permit requirement for commercial and recreational fishing and retention;
- A requirement for vessels fishing for smoothhound sharks to carry an observer, if NMFS selects them;
- A requirement for vessels fishing for smoothhound sharks to comply with applicable Take Reduction Plans pursuant to the Marine Mammal Protection Act; and
- A requirement for commercial vessels to sell catch only to federally-permitted shark dealers.

In addition, this action addresses an effective date for the smoothhound shark management measures in the 2011 HMS trawl rule published on August 10, 2011 (76 FR 49368). As described above, the HMS trawl rule allowed, among other things, for the retention of smoothhound sharks caught incidentally with trawl gear, provided that total smoothhound shark catch on board or offloaded does not exceed 25 percent of the total catch by weight.

FMP Amendment Adjusting the Quota for the Smoothhound Shark Fishery

When Amendment 3 was finalized, smoothhound shark data was available through 2007, although there was no stock assessment for the species. Updated information is now available—in some cases as recently as 2013—although data on the number of participants, total catch, fishing techniques, spatial and temporal availability, etc., are still incomplete because of the lack of mandatory reporting requirements for this shark species. Data can be expected to improve in

the future with implementation of the previously-delayed Amendment 3 requirements for a Federal permit, dealer reporting, and observer coverage as well as completion of the current smoothhound shark stock assessment. As stated in Amendment 3, NMFS' goal has been to characterize and collect data on the smoothhound fishery while minimizing changes in the fishery until it can be better assessed and additional management measures can be developed. Thus, as described in the final rule for Amendment 3, NMFS established a smoothhound shark quota using the best data available at that time equal to the highest reported annual landings between 1998 and 2007, plus two standard deviations in order to account for any underreporting due to the lack of smoothhound shark reporting requirements and to follow advice from the Northeast and Southeast Fisheries Science Centers (June 1, 2010, 75 FR 30484).

Since publishing Amendment 3, NMFS has received updated reported landings data from the Atlantic Coastal Cooperative Statistics Program (ACCSP) that warrants adjusting the quota established in Amendment 3, using the same methodology presented in Amendment 3 but with the new data. This quota adjustment would be done through an amendment to the 2006 Consolidated HMS FMP. Additionally, NMFS has begun conducting a smoothhound shark stock assessment (79 FR 17509, March 28, 2014; 79 FR 23327, April 28, 2014). In this action, NMFS analyzes quota alternatives ranging from the status quo (the quota calculated in Amendment 3) to adjusting the quota based on updated landings information to establishing the quota based on quota scenarios that could result from the ongoing stock assessment. Additional environmental analyses and regulatory action may be considered if warranted by the stock assessment outcomes, or depending on the magnitude of any resultant changes in management approaches. Landings from both the directed and incidental smoothhound shark fisheries would count against the adopted quota.

The preferred alternative in this proposed rule would establish a smoothhound quota of 1,739.9 mt dw, which is equal to the maximum annual landings from the 10 most recent years available at this time (i.e., 2004-2013) plus two standard deviations. The quota alternative that was finalized in Amendment 3 was selected because NMFS, with guidance from the NEFSC and SEFSC, determined that adding two standard deviations to the maximum annual landings was the best way to account for any underreporting in the fishery while minimizing changes in catch levels and catch rates in the smoothhound shark fishery. While the quota under the current preferred alternative is higher than the quota calculated in Amendment 3, it caps the quota at a level that reflects the current operation of the smoothhound shark fishery without allowing the quota to increase in the future if reported landings increase. As stated when establishing this methodology in Amendment 3, since landings data could be underestimated due to underreporting, setting the quota above current reported landings levels should allow the fishery to continue at current levels, minimizing changes to the fishery while collecting information on catch and participants.

In the short-term, this preferred alternative is expected to have neutral direct ecological impacts on the smoothhound stock, as the quota-setting approach was designed to bring the species under Federal management while minimizing immediate changes in the fishery. The preferred alternative could have long-term direct minor adverse ecological impacts due to a potential for increased landings of smoothhound compared to other alternatives with lower quotas. In the preferred alternative, allowable effort and landings would be higher than the quota set under Amendment 3; however, the allowable landings would more accurately represent current fishing activity and would be constrained with a cap that prevents future growth of the fishery. Implementing such a cap on landings would help ensure that the smoothhound stock is

maintained at a healthy level. This preferred alternative appropriately adjusts the Amendment 3 quota and remains within the intended outcome of the range of alternatives considered in the Amendment 3 rulemaking. The intent of Amendment 3 was to minimize changes in catch levels and catch rates in the fishery to allow for the collection of catch and participant information pending completion of a stock assessment to guide Federal management. A smoothhound shark stock assessment is currently being conducted. NMFS believes it is imperative to bring smoothhound sharks under Federal management as quickly as possible, particularly given that time has passed since Amendment 3 was first published. Although a smoothhound shark stock assessment is currently underway, NMFS is proceeding with developing a quota based on landings history to avoid any further delays in federally managing this stock. As explained below, this rulemaking considers another alternative that would further adjust the quota(s) if necessary based on this stock assessment if it is available before publication of the final rule.

The preferred smoothhound quota alternative would result in potential annual revenues in the entire fishery of \$3,016,460 (3,835,784 lb. of meat, 460,294 lb. of fins) assuming an ex-vessel price of \$1.72 lb. for fins and \$0.58 for meat. Setting the quota at current landings levels with room for presumed underreporting should allow the fishery to continue throughout the year, rather than be closed for part of the year, allowing NMFS to collect year-long information that can be used in future stock assessments. NMFS anticipates direct moderate, beneficial short- and long-term socioeconomic impacts with implementing a quota based on maximum reported recent annual landings plus two standard deviations to allow for a buffer for potential unreported landings during that time to reflect actual landings. This would allow the fishery to continue at the landings rate and level reported in recent years. Under this alternative, NMFS anticipates the fishery would operate as it currently does, resulting in indirect, moderate beneficial

socioeconomic impacts in the short- and long-term for shark dealers and processors. The preferred alternative accounts for recent trends in the fishery and the best available landings data as recalculated and reported by ACCSP, reflects recent behavior in the fishery, and provides an appropriate buffer to account for underreporting in the fishery. Additionally, providing a maximum cap on the fishery would allow fishermen, dealers, and processors to make better business decisions based on a more predictable yield (assuming that the fishery is fished to near-full capacity each year).

NMFS is also considering three other quota alternatives that are not preferred at this time. The first would not adjust the commercial smoothhound shark quota, and would instead implement the quota as calculated in Amendment 3. This alternative is not preferred because it does not use the best available information and would result in premature fishery closures, inconsistent with the objectives in Amendment 3 and in this Amendment, which are to bring smoothhound sharks within Federal management, collect data to improve future management measures, and minimize changes to the fishery in the meantime. The second alternative considers a rolling quota that would recalculate the quota each year based on the previous 5 years of available landings data. This rolling quota alternative was not preferred because the quota could grow, expanding the fishery without limit, which could lead to unsustainable fishing levels. The third quota alternative would implement a TAC and smoothhound shark quota(s) consistent with the results of the 2014 smoothhound shark stock assessment if the results become available before publication of the final rule for this action. This alternative is based on a possible range of quota recommendations that reasonably could be expected to result from the assessment. The potential range of quota recommendations from the assessment are quota(s): 1) equal to approximately one-half the Amendment 3 quota (357.8 mt dw); 2) approximately equal

to the Amendment 3 quota; 3) half way in between Amendment 3 and the proposed quota, or 1,227.7 mt dw; and 4) larger than Amendment 3, approximately equal to or greater than the quota under preferred alternative (1,739.9 mt dw). Because the stock assessment is not yet final and it is unknown if it will be available before the final rule for this action publishes, NMFS does not prefer this alternative at this time. Additional environmental analyses and regulatory action may be considered, if warranted by the stock assessment outcomes or depending on the magnitude of any resultant changes in management approaches.

Implementation of the Smooth Dogfish-Specific Provisions of the Shark Conservation Act of 2010

The SCA amended the Magnuson-Stevens Act to provide greater protection from illegal "finning" of sharks. Shark finning is the practice of taking a shark, removing a fin or fins (whether or not including the tail), and returning the remainder of the shark to the sea. Among the provisions in subsection 103(a) of the SCA is a requirement that all sharks landed from federal waters in the United States be maintained with the fins naturally-attached to the carcass through offloading. Subsection (b), however, provides the following exception: "The amendments made by subsection (a) do not apply to an individual engaged in commercial fishing for smooth dogfish (Mustelus canis) in that area of the waters of the United States located shoreward of a line drawn in such a manner that each point on it is 50 nautical miles from the baseline of a State from which the territorial sea is measured, if the individual holds a valid State commercial fishing license, unless the total weight of smooth dogfish fins landed or found on board a vessel to which this subsection applies exceeds 12 percent of the total weight of smooth dogfish carcasses landed or found on board." The SCA provides that "State" has the same meaning as in section 803 of Public Law 103–206 (16 U.S.C. 5102), which refers to "Maine,

New Hampshire, Massachusetts, Rhode Island, Connecticut, New York, New Jersey, Pennsylvania, Delaware, Maryland, Virginia, North Carolina, South Carolina, Georgia, Florida, the District of Columbia, or the Potomac River Fisheries Commission.” To implement the exception, this proposed rule considers three issues: catch composition, state permit requirements, and geographic applicability of the exception—and explores alternatives for each issue. If a federally-permitted shark fisherman does not qualify for this exception under the SCA, he will be required to land smooth dogfish with the fins naturally attached. Note that although several Atlantic coast states have laws addressing shark fins, those state laws as of the date of this proposed rule provide an exception for smooth dogfish, and so present no conflict with the SCA as applied to smooth dogfish, whether or not the SCA exception applies.

NMFS considered four Catch Composition sub-alternatives to address the SCA text regarding “an individual engaged in commercial fishing for smooth dogfish (Mustelus canis).” Because the SCA specifies that the exception applies when an individual is fishing “for” smooth dogfish as opposed to fishing “for” other species and incidentally catching smooth dogfish or simply “when fishing,” the proposed rule examines alternatives that limit the exception to those fishing for smooth dogfish, i.e., fishing with the object of commercially harvesting smooth dogfish.

Under the preferred sub-alternative, smoothhound sharks must make up 75 percent of the retained catch on board a vessel to constitute a trip fishing “for” smooth dogfish. Implementing a target catch requirement of 75 percent smooth dogfish would preclude fishermen on trips for other species but who incidentally catch smooth dogfish from removing smooth dogfish fins at sea. Only those fishermen fishing for smooth dogfish as defined by this rulemaking would be allowed to remove the fins of the species while at sea. Under this preferred sub-alternative, no

sharks other than smooth dogfish could be retained when smooth dogfish fins are removed at sea. This requirement would ensure that no other shark species are on board with fins removed, ensuring consistency with other provisions of the SCA. This sub-alternative would likely have direct short- and long-term minor beneficial impacts. Indirect ecological impacts to species caught with smooth dogfish would likely both be neutral in the short- and long-term, because fishing effort or rates are not expected to change under this sub-alternative. The only changes that would occur under this sub-alternative would be in fisheries for other species that incidentally catch smooth dogfish. Fishermen in these incidental fisheries do not plan trips around smooth dogfish; rather, they engage in fishing operations based on the target species availability and market. Therefore, a prohibition on at-sea fin removal of smooth dogfish fins in the incidental fishery would not be expected to alter effort. Indirect impacts are generally positively correlated with effort. Effort would not likely be affected, and indirect impacts would be neutral. Since this sub-alternative would be unlikely to have adverse ecological impacts and provides some flexibility in retained catch, NMFS prefers this sub-alternative at this time.

Because some fishermen catch smooth dogfish while fishing for other species, the preferred catch composition sub-alternative is likely to have short- and long-term direct, minor, adverse socioeconomic impacts since it would reduce flexibility in which species may be retained, though not to the extent that other alternatives would. The number of mixed species trips where fishermen could take advantage of the fins-attached exception would decrease. However, this sub-alternative provides more flexibility than other sub-alternatives, specifically the sub-alternative that examines a 100-percent smooth dogfish catch composition requirement for the exception to apply. For these reasons, NMFS prefers this sub-alternative at this time.

NMFS also considered three other catch composition sub-alternatives. The first would not implement any catch composition requirement, allowing the fins of smooth dogfish to be removed at sea regardless of the composition of the rest of the catch, provided no other sharks are retained. This measure was not preferred because it would not limit the at-sea processing allowance to “fishing for smooth dogfish,” consistent with the SCA. Second, NMFS considered a 25-percent smooth dogfish catch composition for at-sea processing, which would allow some fishermen who are fishing for species other than smooth dogfish and catching smooth dogfish incidental to those fishing activities to use the limited exception. This measure was not preferred because it would not limit the at-sea processing allowance to individuals “fishing for smooth dogfish,” consistent with the SCA. Third, NMFS considered a 100-percent smooth dogfish catch composition for at-sea processing. Although this sub-alternative would even more narrowly limit the fins-attached exception to fishermen only “fishing for smooth dogfish,” consistent with the SCA, it would remove all flexibility in retained catch on board vessels that remove smooth dogfish fins at sea, possibly increasing dead discards without providing any clear benefits beyond the preferred sub-alternative. For this reason, NMFS does not prefer that sub-alternative at this time.

NMFS considered two State Fishing Permit sub-alternatives to address text in the SCA exception regarding “if the individual holds a valid State commercial fishing license.” The preferred sub-alternative would require federally-permitted smooth dogfish fishermen to possess a State commercial fishing license that allows fishing for smooth dogfish in order to be able to remove smooth dogfish fins at sea. A “valid state commercial fishing license” would be any state license that allows the individual to engage in commercial fishing for smooth dogfish, whether it is dogfish-specific or a general shark permit or a general commercial fishing permit.

This sub-alternative recognizes variations in state fishing permit processes that allow commercial fishing for smooth dogfish.

NMFS is also examining a sub-alternative based on a more narrow application of the exception. The language in the smooth dogfish-specific provision of the SCA states that it applies to an “individual engaged in commercial fishing for smooth dogfish . . . if the individual holds a valid State commercial fishing license.” Sub-alternative 2 would interpret this more narrowly to mean that the individual has a smoothhound-specific State commercial fishing license, since the exception applies only to “individuals engaged in commercial fishing ‘for’ smooth dogfish.” By requiring a smooth dogfish-specific permit and not a general state commercial license, NMFS would be further ensuring that the individual is one “engaged in commercial fishing for smooth dogfish,” which NMFS interprets as narrowing the limited at-sea fin removal allowance only to those fishing for smooth dogfish. Requiring a smooth dogfish-specific State fishing permit would likely lead to direct and indirect short and long-term neutral ecological impacts since this sub-alternative would not increase fishing effort. Because not all states have smooth dogfish-specific permits, NMFS does not prefer this alternative at this time but is seeking comments, particularly from the States, about their preferences and what approach would work best in conjunction with their state approach to permitting and state fishery objectives.

NMFS considered two alternatives for Geographic Application of the SCA exception: applying the exception along the Atlantic Coast and the Florida Coast in the Gulf of Mexico, and applying the exception only along the Atlantic Coast. As explained earlier, as a practical matter, smooth dogfish and other smoothhound species are essentially indistinguishable in the field, and while the Atlantic population is entirely smooth dogfish but for the occasional Florida

smoothhound, the Gulf of Mexico population includes all three species. The best available scientific information indicates smooth dogfish are the predominant smoothhound species along the Atlantic coast (only a handful of Florida smoothhound have ever been recorded in the Atlantic, and those have been near southern Florida). In the Gulf of Mexico, however, there are at least three different smoothhound species, with no practical way to readily distinguish among them. The non-preferred sub- alternative would apply the smooth dogfish exception 50 nautical miles from the baseline of all the States that fall under the SCA definition of “State,” including the west coast of Florida in the Gulf of Mexico. This sub-alternative could result in smoothhound sharks other than smooth dogfish indirectly falling under the exception, because they cannot be distinguished from smooth dogfish, which would violate the specific requirements of the SCA and pose enforcement difficulties. The preferred sub-alternative would apply the exception only along the Atlantic Coast where the population is almost entirely smooth dogfish, but not in the Gulf of Mexico—even on the Florida Coast. By limiting the exception to the Atlantic region, as specified at § 635.27(b)(1), this sub-alternative would ensure that the exception would only apply where the population is almost entirely smooth dogfish, reducing identification problems and inadvertent finning violations. NMFS expects neutral direct and indirect short- and long-term ecological impacts because, at this time, there is no commercial fishery for smooth dogfish in the Gulf of Mexico. For the same reason, NMFS expects neutral direct and indirect short- and long-term socioeconomic impacts. NMFS prefers this sub-alternative at this time because it simplifies enforcement and compliance without adverse impacts.

Implementation of the 2012 Shark Biological Opinion

On December 12, 2012, following consultation under section 7(a)(2) of the Endangered Species Act (ESA), NMFS determined that the continued operation of the Atlantic shark and smoothhound shark fisheries is not likely to jeopardize the continued existence of Atlantic sturgeon, smalltooth sawfish, or any species of ESA-listed large whale or sea turtles. In order to avoid take prohibited by Section 9 of the ESA, NMFS must comply with the Reasonable and Prudent Measures (RPMs) and the Terms and Conditions (TCs) in the 2012 Shark BiOp. NMFS has reviewed the 2012 Shark BiOp and associated TCs and has determined that the current regulations meet the specifications of all the TCs except for TC 4, which requires either net checks or soak time restrictions in the Atlantic shark gillnet fisheries. Therefore, this rulemaking considers measures that would ensure the Atlantic shark gillnet fisheries operate consistent with TC 4 in the 2012 Shark BiOp.

NMFS proposes to establish a soak time limit of 24 hours for fishermen using sink gillnet gear and a 2-hour net check requirement for fishermen using drift gillnet gear in the Atlantic shark and smoothhound shark fisheries. Drift gillnets would be defined as those that are unattached to the ocean bottom with a float line at the surface, and sink gillnet gear would be defined as those with a weight line that sinks to the ocean bottom, has a submerged float line, and is designed to be fished on or near the bottom. Most smoothhound shark gillnet fishermen would be required to limit soak times to 24 hours, since they primarily use sink gillnet gear. This requirement would not significantly change smoothhound shark fishing practices. With regard to other Atlantic shark fishermen, fishermen who use sink gillnet gear would be required to limit soak times to 24 hours and those that use drift gillnets would be required to perform net checks at least every 2 hours. Currently, all Atlantic shark fishermen that use gillnet gear to fish for or who are in possession of any large coastal, small coastal, or pelagic shark, regardless of gillnet

type, are required to perform net checks at least every 2 hours (see § 635.21(e)(3)(v)). During the net checks, fishermen are required to look for and remove any sea turtles, marine mammals, or smalltooth sawfish. Only a few Atlantic shark limited access permit holders use gillnet gear and the proportions of each type (e.g., sink or drift) vary in any one year. Fishermen are not required to report the type of gillnet gear used, so the proportion of each type is best estimated using data from observed gillnet trips, although it is important to note that not all observed trips targeted sharks. From 2009 through 2012, the portion of gillnet trips that used sink gillnet gear ranged from a low in 2009 of 47 percent, up to 87 percent, 100 percent, and 93 percent in 2010-2012, respectively. For a variety of reasons (e.g., reduced LCS retention limits and gillnet gear fishing restrictions), it appears that the fishery has moved predominately to sink gillnet gear. Under the preferred alternative, shark gillnet fishermen that use sink gillnet gear would no longer be required to perform net checks at least every 2 hours under this alternative. Instead, they would be required to limit soak times to 24 hours. In the 2002 rulemaking that implemented the net checks (July 9, 2002, 67 FR 45393), NMFS stated that the net checks would be unlikely to impact the bycatch of species that are not protected resources. This statement was made because the net checks do not require fishermen to remove or disentangle any animals except protected species during the net checks, thus, non-protected resource bycatch species would be unlikely to be removed from the net. In the 2012 BiOp, the requirement to use either net checks or the 24 hour set limitation was determined to ensure that any incidentally taken ESA-listed species are detected and released in a timely manner, reducing the likelihood of mortality.

As such, this preferred alternative would likely result in short- and long-term direct minor adverse ecological impacts because the target species, sharks, could remain in the gillnet for longer periods of time before being released, reducing the chances of a live release. Similarly,

this alternative could result in short- and long-term indirect neutral ecological impacts to non-target, incidentally caught fish species and bycatch because net checks do not require fishermen to remove or disentangle any animals except protected species during the net checks. This alternative would likely have, however, short- and long-term minor beneficial impacts on protected resources since it would implement one of the Terms and Conditions of the 2012 Shark BiOp to minimize impacts on protected resources. Since this alternative complies with the Biological Opinion, has only minor adverse direct and indirect ecological impacts to other species, and allows all smoothhound shark gillnet fishermen to continue current fishing practices, NMFS prefers this alternative at this time.

This action would likely result in neutral short- and long-term direct socioeconomic impacts. Smoothhound shark fishermen, who typically use sink gillnets, would be required to limit soak times to 24 hours and as discussed above, this requirement is unlikely to significantly alter smoothhound shark fishing practices. Drift gillnet fishermen, who are more likely to target Atlantic sharks rather than smoothhound sharks, would be required to check their nets at least every 2 hours, as is currently required. Thus, this alternative is unlikely to have any socioeconomic impacts to Atlantic shark and smoothhound shark fishermen since it would not change current fishing practices. Similarly, this alternative would likely result in neutral short- and long-term indirect socioeconomic impacts since supporting businesses, including dealers and bait, tackle, and ice suppliers, should not be impacted. The preferred alternative would impact the approximately 31 vessels that annually direct on smoothhound sharks with gillnet gear. Since this action would have minimal economic impact but is still consistent with the 2012 Shark BiOp, and thus sufficiently protects protected resources, NMFS prefers this alternative at this time.

NMFS also considered three other alternatives to implement the 2012 Shark BiOp gillnet requirements in the Atlantic shark fisheries. First, NMFS considered not implementing the requirements, but does not prefer this alternative because it would not be consistent with the 2012 Shark BiOp. Second, NMFS considered requiring smoothhound shark fishermen to conduct net checks at least every 2 hours to look for and remove any protected species. This measure was not preferred because it would change current fishing practices, reducing efficiency and landings, thus reducing profitability, without reducing the likelihood of mortality of protected species per the 2012 BiOp. Third, NMFS considered different requirements based on permit type. It would establish a gillnet soak time limit of 24 hours for smoothhound shark permit holders. Under this alternative, fishermen holding both an Atlantic shark limited access permit and a smoothhound shark permit would have to abide by the 24-hour soak time restriction and conduct net checks at least every 2 hours. This would disadvantage smoothhound shark fishermen holding both permits relative to smoothhound shark fishermen only holding a smoothhound shark permit without ecological benefits to protected resources. For this reason, this measure is not preferred at this time.

Atlantic Shark Gillnet Vessel Monitoring System Requirements

This proposed rule would also revise the requirement to use VMS by shark fishermen using gillnet gear. Currently, Federal directed shark permit holders with gillnet gear on board are required to use VMS, regardless of vessel location. This requirement was implemented as part of the 2003 Amendment 1 to the 1999 FMP to ensure shark gillnet vessels were complying with the Atlantic Large Whale Take Reduction Plan (ALWTRP) time/area closures and observer requirements (50 CFR 229.32). The ALWTRP requirements apply only to Atlantic directed shark limited access permit holders with gillnet gear on board in the Southeast U.S. Monitoring

Area. At the time of implementation in 2003, NMFS determined that requiring all gillnet fishermen with a directed shark permit to use VMS regardless of geographic location would simplify compliance and outreach, particularly if these fishermen regularly fished different regions, including in the Southeast U.S. Monitoring Area. Since then, however, it has become apparent that while some of these fishermen fish multiple regions, many do not fish in or even near the Southeast U.S. Monitoring Area. Thus, this rulemaking considers measures to bring the VMS requirements in-line with the requirements of the ALWTRP.

NMFS proposes to require Federal directed Atlantic shark limited access permit holders with gillnet gear on board to use VMS only in the vicinity of the Southeast U.S. Monitoring Area, pursuant to ALWTRP requirements. This action is expected to have neutral short- and long-term direct and indirect ecological impacts. These VMS requirements are an enforcement tool for complying with the ALWTRP requirements and would not affect catch. VMS requirements do not impact incidentally caught species. The preferred alternative would likely provide short- and long-term moderate beneficial impacts for protected resources, because it maintains the requirement to have VMS on board when gillnet fishing in the U.S. Southeast Monitoring Area, as required in the ALWTRP. The difference between this alternative and the No Action alternative is that this alternative would limit the VMS requirement for Atlantic shark permit holders using gillnet gear to the vicinity of the Southeast U.S. Monitoring Area. Requirements to minimize large whale interactions would not change, only the geographic area of the VMS requirement. For this reason, protected resource impacts resulting from the preferred alternative are the same as for the no action alternative. Thus, because this alternative maintains the VMS requirements for large whales consistent with the ALWTRP, and at the same time reduces adverse socioeconomic impacts, NMFS prefers this alternative at this time.

This change to the VMS gillnet requirement would have short- and long-term direct minor beneficial socioeconomic impacts. Atlantic shark gillnet fishermen fishing in the vicinity of the Southeast U.S Monitoring Area would still incur the installation costs of the VMS, but data transmission would be limited to those times when the vessel is in this area. Furthermore, shark gillnet fishermen outside of this area that do not fish in the vicinity of the Southeast U.S Monitoring Area would not need to install a VMS unit or, if they already have one, maintain the VMS unit or replace a malfunctioning one. Thus, the socioeconomic impacts from this alternative, while still adverse, are of a lesser degree than those under the No Action alternative. This alternative would likely result in neutral short- and long-term indirect socioeconomic impacts since supporting businesses including dealers and bait, tackle, and ice suppliers would not be impacted. Since this alternative is more in line with the requirements of the ALWTRP, and because it would reduce socioeconomic impacts while still maintaining beneficial ecological impacts for protected whale species, NMFS prefers this alternative at this time.

Other Measures

Currently, the Atlantic shark fishery observer program is administered by the NMFS Southeast Fisheries Science Center (SEFSC). However, because a portion of the commercial smoothhound shark fishery occurs in the Northeast region, there is a possibility that the smoothhound shark observer program could be run by the NMFS Northeast Fisheries Science Center (NEFSC). The two regional science center observers programs differ in the way they notify fishermen of their selection to carry an observer. The SEFSC notifies fishermen in writing at the time of selection. This process is currently in the 50 CFR part 635 regulations. The NEFSC does not require written notification of selection and any vessel holding an applicable permit can be selected. Thus, NMFS is proposing changes to the observer regulations in 50 CFR

part 635 to incorporate the relevant portions of the Northeast observer regulations found at 50 CFR part 648. In this action, NMFS proposes to update the regulatory text to incorporate the observer selection process used by the NEFSC into the current selection process used by the SEFSC. These proposed changes are administrative in nature, will not have any biological, economic, or social impacts or impacts on the physical environment and are not anticipated to affect the current fishing level or practices in commercial highly migratory species fisheries, and, therefore, are not further analyzed in this document.

Request for Comments

Comments on this proposed rule may be submitted via <http://www.regulations.gov>, or mail, and comments may also be submitted at a public hearing. NMFS solicits comments on this proposed rule by November 14, 2014 (See DATES and ADDRESSES). We will announce the dates and locations of public hearings in a future Federal Register notice.

Classification

Pursuant to the Magnuson-Stevens Act, the NMFS Assistant Administrator has determined that the proposed rule is consistent with the 2006 Consolidated HMS FMP and its amendments, other provisions of the Magnuson-Stevens Act, and other applicable law, subject to further consideration after public comment.

NMFS prepared a draft EA for Draft Amendment 9 that discusses the impact on the environment that would occur as a result of this proposed action. In this proposed action, NMFS is considering measures for the smoothhound shark fishery, smooth dogfish, and the Atlantic shark gillnet fishery. A copy of the EA is available from NMFS (see ADDRESSES).

This proposed rule has been determined to be not significant for purposes of Executive Order 12866.

This proposed rule contains a collection-of-information requirement subject to review and approval by the Office of Management and Budget (OMB) under the Paperwork Reduction Act (PRA). This requirement has been submitted to OMB for approval.

The Federal commercial smoothhound shark permit requirement analyzed in Amendment 3 will become effective upon the effective date of a final rule. NMFS submitted a PRA change request to OMB to add this permit to the existing HMS permit PRA package (OMB control number 0648-0327). OMB subsequently accepted the change request to add the Federal commercial smoothhound shark permit to the HMS permit PRA package.

Public comment is sought regarding: whether this proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; the accuracy of the burden estimate; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the collection of information, including through the use of automated collection techniques or other forms of information technology. Send comments on these or any other aspects of the collection of information to (enter office name) at the ADDRESSES above, and by e-mail to OIRA_Submission@omb.eop.gov or fax to (202) 395-7285.

Notwithstanding any other provision of law, no person is required to respond to, and no person shall be subject to penalty for failure to comply with, a collection of information subject to the requirements of the PRA, unless that collection of information displays a currently valid OMB control number.

Regulatory Flexibility Act

An initial regulatory flexibility analysis (IRFA) was prepared, as required by section 603 of the Regulatory Flexibility Act (RFA). The IRFA describes the economic impact this proposed

rule would have on small entities if adopted. A description of the action, why it is being considered, and the legal basis for this action are contained at the beginning of this section in the preamble and in the SUMMARY section of the preamble. A summary of the analysis follows. A copy of this analysis is available from NMFS (see ADDRESSES).

This proposed action is designed to implement the smooth dogfish provisions of the Shark Conservation Act of 2010 and to implement the smoothhound sharks measures in Amendment 3 to the 2006 Consolidated HMS FMP (75 FR 30484, June 1, 2010) and the 2011 Atlantic HMS Trawl Rule (76 FR 49368, August 10, 2011) that are currently on hold. This action also reexamines the smoothhound shark quota that would be implemented along with the Amendment 3 measures. NMFS has updated landings data that could necessitate a recalculation of the quota. See Section 1.3 of the Draft EA for Amendment 9 for more information.

On December 12, 2012, consistent with Section 7(b)(4) of the ESA, NMFS determined that the continued operation of the Atlantic shark and smoothhound shark fisheries is not likely to jeopardize the continued existence of Atlantic sturgeon, smalltooth sawfish, or any species of ESA-listed large whale or sea turtles. In order to be exempt from take prohibitions established by Section 9 of the ESA, NMFS must comply with the RPMs and TCs listed in the 2012 Shark BiOp. One purpose of Amendment 9 is to propose measures to implement the 2012 Shark BiOp TCs that are specific to the Atlantic shark and smoothhound shark fisheries. See Section 1.3 of the Draft EA for Amendment 9 for more information.

Currently, Federal directed shark permit holders with gillnet gear on board are required to use VMS regardless of vessel location. This requirement was originally implemented to comply with the ALWTRP requirements at 50 CFR 229.32. However, these requirements require federal directed shark permit holders with gillnet gear on board to use VMS only when fishing in a

certain area in the South Atlantic. Thus, another purpose of this rulemaking is to examine measures to bring current VMS regulations for Federal directed shark permit holders using gillnet gear in-line with the current requirements of the ALWTRP at 50 CFR 229.32. See Section 1.3 of the Draft EA for Amendment 9 for more information.

The management goals and objectives of this action are to provide for the sustainable management of smoothhound sharks and Atlantic shark species under authority of the Secretary consistent with the requirements of the Magnuson-Stevens Act and other statutes which may apply to such management, including the ESA and the Marine Mammal Protection Act (MMPA). The management objectives are to achieve the following:

- Implement the smooth dogfish provisions of the SCA.
- Implement other measures, as necessary, to ensure that the smooth dogfish provisions of the SCA do not negatively impact the sustainable fishery of other shark species.
- Reexamine the smoothhound shark quota in light of updated landings data.
- Implement the Term and Condition of the 2012 Smoothhound Shark and Atlantic Shark Biological Opinion related to gillnet impacts on ESA-listed species.
- Reexamine Atlantic shark gillnet VMS regulation in compliance with the ALWTRP, per the MMPA.

Section 603(b)(3) of the RFA requires Agencies to provide an estimate of the number of small entities to which the rule would apply. On June 12, 2014, the Small Business Administration (SBA) issued a final rule revising the small business size standards for several industries effective July 14, 2014 (79 FR 33647; June 12, 2014). The rule increased the size standard for Finfish Fishing from \$ 19.0 to 20.5 million. NMFS has reviewed the analyses prepared for this action in light of the new size standards. Under the former, lower size

standards, all entities subject to this action were considered small entities; thus, they all would continue to be considered small entities under the new standards. NMFS does not believe that the new size standards affect analyses prepared for this action and solicits public comment on the analyses in light of the new size standards. Under these standards, NMFS considers all Atlantic HMS permit holders subject to draft Amendment 9 to be small entities.

As discussed in Section 6.1 of the Draft EA for Amendment 9, NMFS does not have exact numbers on affected commercial fishermen. The smoothhound shark commercial permit has not yet been created, so NMFS does not know how many smoothhound shark fishermen will be impacted. An annual average of 275 vessels reported retaining smooth dogfish through VTR from 2003 – 2012. This is NMFS' best estimate of affected smoothhound shark fishermen.

While the retention of sharks in federal waters requires one of two limited access commercial shark permits, these permits do not specify gear type, such as gillnets. For this reason, NMFS does not know the exact number of affected shark gillnet fishermen. As of July 11, 2013, there are 216 directed shark and 261 incidental shark permit holders. Logbook records indicate that there are usually about 10 Atlantic shark directed permit holders that use gillnet gear in any year. However, the universe of directed permit holders using gillnet gear can change from year to year and could include anyone who holds an Atlantic shark directed permit.

As of July 11, 2013, there are 96 Atlantic shark dealers. These dealers could be affected by these measures to varying degrees. Not all of these dealers purchase smoothhound sharks and those that do are concentrated in the Mid-Atlantic region. NMFS will know more about the number of affected dealers when smoothhound reporting requirements go into place. Similarly, not all of these dealers purchase Atlantic sharks caught with gillnet gear. The number is likely low and is concentrated in Florida and the Gulf of Mexico.

NMFS has determined that the proposed rule is not likely to affect any small governmental jurisdictions. More information regarding the description of the fisheries affected, and the categories and number of permit holders can be found in Chapter 3 of the Draft EA for Amendment 9.

Under section 603(b)(4) of the RFA, Agencies are required to describe any new reporting, record-keeping and other compliance requirements. The Federal commercial smoothhound shark permit requirement analyzed in Amendment 3 to the 2006 Consolidated HMS FMP will become effective upon the effective date of this rule. NMFS submitted a PRA change request to OMB to add this permit to the existing HMS permit PRA package (OMB control number 0648-0327). OMB subsequently accepted the change request to add the federal commercial smoothhound shark permit to the HMS permit PRA package.

On November 15, 2013, NMFS published a final rule (78 FR 68757) that modifies declaration requirements for Atlantic shark fishermen using VMS. The final rule implements requirements for operators of vessels that have been issued Atlantic HMS permits and are required to use their VMS units to provide hourly position reports 24 hours a day, 7 days a week (24/7). The final rule implements requirements allowing the operators of such vessels to make declarations out of the fishery when not retaining or fishing for Atlantic HMS for specified periods of time that encompass two or more trips. These changes alter the burden estimates under the existing HMS permit PRA package (OMB control number 0648-0327).

Under section 603(b)(5) of the RFA, agencies must identify, to the extent practicable, relevant Federal rules which duplicate, overlap, or conflict with the proposed rule. Fishermen, dealers, and managers in these fisheries must comply with a number of international agreements, domestic laws, and other FMPs. These include the Magnuson-Stevens Act, the Atlantic Tunas

Convention Act, the High Seas Fishing Compliance Act, the Marine Mammal Protection Act, the Endangered Species Act, the National Environmental Policy Act, the Paperwork Reduction Act, and the Coastal Zone Management Act. This proposed rule has also been determined not to duplicate, overlap, or conflict with any other Federal rules.

One of the requirements of an IRFA is to describe any alternatives to the proposed rule which accomplish the stated objectives and which minimize any significant economic impacts. These impacts are discussed below. Additionally, the RFA (5 U.S.C. § 603 (c) (1)-(4)) lists four general categories of “significant” alternatives that would assist an agency in the development of significant alternatives. These categories of alternatives are: (1) establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) clarification, consolidation, or simplification of compliance and reporting requirements under the rule for such small entities; (3) use of performance rather than design standards; and, (4) exemptions from coverage of the rule for small entities.

In order to meet the objectives of this proposed rule, consistent with the Magnuson-Stevens Act, ATCA, and the ESA, NMFS cannot establish differing compliance requirements for small entities or exempt small entities from compliance requirements. Thus, there are no alternatives discussed that fall under the first and fourth categories described above. NMFS does not know of any performance or design standards that would satisfy the aforementioned objectives of draft Amendment 9 while, concurrently, complying with the Magnuson-Stevens Act. As described below, NMFS analyzed several different alternatives in this proposed rulemaking and provides rationale for identifying the preferred alternative to achieve the desired objective.

The alternatives considered and analyzed are described below. The IRFA assumes that each vessel will have similar catch and gross revenues to show the relative impact of the proposed action on vessels.

With regard to the implementation of the SCA, NMFS considered two alternatives. Alternative A1, which would not implement the smooth dogfish-specific provisions of the SCA and would instead implement the fins attached requirement finalized in Amendment 3, and Alternative A2, which proposes to implement the smooth dogfish-specific provisions of the SCA and has sub-alternatives that address the specific elements of the of the smooth dogfish-specific provisions.

Alternative A1 would not implement the smooth dogfish-specific provisions of the SCA and would require all smooth dogfish to be landed with fins naturally attached. This alternative would change current fishing practices since smooth dogfish caught in the directed and incidental fisheries are fully processed while at sea. As a result, this Alternative A1 would likely lead to reduced landings and a lower ex-vessel price since the product would not be fully processed. This could lead to adverse socioeconomic impacts.

Under Alternative A2, the preferred alternative, an allowance for the removal of smooth dogfish fins at sea would increase efficiency in the smooth dogfish fishery and provide a more highly processed product for fishermen to sell to dealers. Quantifying the financial benefits is difficult since baseline effort and increases in efficiency cannot be calculated, but the benefit would not exceed \$585,516, the ex-vessel value of the entire smooth dogfish gillnet fishery. The benefit to individual vessels is likely equal to the average annual per vessel revenues from smooth dogfish caught in the directed sink gillnet fishery which was \$15,365.

Supporting entities, such as bait and tackle suppliers, ice suppliers, dealers, and other similar businesses, could experience increased revenue if the efficiency of fin removal at sea results in a higher quality product. However, while supporting businesses would benefit from the increased profitability of the fishery, they do not solely rely on the smooth dogfish fishery. In the long-term, it is likely that changes in the smooth dogfish fishery would not have large impacts on these businesses.

Under Sub-Alternative A2-1a, smooth dogfish could make up any portion of the retained catch on board, provided that no other sharks are retained. This sub-alternative would authorize smooth dogfish fishermen to retain any non-shark species of fish while still availing themselves of the at-sea fin removal allowance. Smooth dogfish are often caught incidentally during other fishing operations, thus this sub-alternative would allow fishermen to maximize the profitability of each trip and allow individual operators the flexibility to make decisions, before the trip and while on the water, as to the retained catch composition that would maximize ex-vessel revenues. Under this alternative, fishermen could remove smooth dogfish fins at sea during any type of trip including those trips that are directing on other non-shark species. This alternative would maintain the current practice in the fishery and vessels could continue to have ex-vessel revenues of \$585,516 per year in the smooth dogfish gillnet fishery.

Under Sub-Alternative A2-1b, fishermen could avail themselves of the at-sea fin removal allowance only if smooth dogfish comprise 25 percent of the retained catch on board. This sub-alternative would authorize smooth dogfish fishermen to retain some non-shark species of fish while still availing themselves of the at-sea fin removal allowance. Smooth dogfish are often caught incidentally during other fishing operations, thus this sub-alternative would allow fishermen to increase the profitability of each trip and allow individual operators the flexibility to

make decisions, before the trip and while on the water, as to the retained catch composition that would increase ex-vessel revenues. This increase in flexibility would be to a lesser extent than Sub-Alternative A2-1a, which would not have a catch composition requirement, but greater than the other sub-alternatives that limit the fins-attached exception to the directed fishery. This sub-alternative would decrease total ex-vessel revenues relative to the current level of \$585,516 per year in the smooth dogfish gillnet fishery.

Under Sub-Alternative A2-1c, a preferred sub-alternative, fishermen could avail themselves of the at-sea fin removal allowance only if smooth dogfish comprise 75 percent of the retained catch on board. NMFS chose this threshold because in other HMS fisheries, 75 percent retention of the target catch is considered a trip where the fisherman is fishing for that species. Thus, implementing a target catch requirement of 75 percent smooth dogfish would limit the at-sea fin removal allowance to those fishing for smooth dogfish. Because some fishermen catch smooth dogfish while fishing for other species, this sub-alternative is likely to reduce flexibility in which species may be retained and would decrease the number of mixed species trips where fishermen could take advantage of the at-sea fin removal allowance. Between 2003 and 2012, an annual average of 275 vessels landed smooth dogfish, but only around 30 vessels targeted smooth dogfish in any given year. For this reason, NMFS estimates that approximately 245 vessels in the mixed species fishery would be impacted by sub-Alternative A2-1c.

Sub-Alternative A2-1d would require smooth dogfish to comprise 100 percent of the retained catch on board the vessel in order for fishermen to avail themselves of the at-sea fin removal allowance for smooth dogfish. This sub-alternative would eliminate the ability of mixed trips to take advantage of the at-sea fin removal, and would reduce flexibility in deciding which

species to retain on each fishing trip. However, the approximately 30 vessels (annual average 2003-2012) that target smooth dogfish often only retain smooth dogfish due to the processing practices in place. Thus, these fishermen would only have smooth dogfish on board and would not be impacted by a 100 percent smooth dogfish requirement, and would benefit from the ability to remove the smooth dogfish fins at sea.

Sub-Alternative A2-2a would require federal smoothhound permitted fishermen to obtain a smooth dogfish-specific state commercial fishing license in order to be able to remove smooth dogfish fins at sea. The requirement to obtain a smooth dogfish-specific state commercial fishing license may be more difficult for fishermen who are in states that do not have smooth dogfish-specific permits in place. This sub-alternative would result in the increased burden on fishermen to obtain another permit, and depending upon the state, could result in an additional permit charge. Since most permits are valid for one year, fishermen would likely need to renew the permit each year for as long as they wish to retain smooth dogfish and remove the fins while at sea. Because not all states have smooth dogfish-specific permits, NMFS does not prefer this alternative at this time but is seeking comments, particularly from the States, about their preferences and what approach would work best in conjunction with their state approach to permitting and state fishery objectives.

Sub-Alternative A2-2b, the preferred alternative, would require fishermen to hold any state commercial fishing permit that allows retention of smooth dogfish. It is likely, however, that most smooth dogfish fishermen already hold this type of state permit and would be unaffected by this requirement. This sub-alternative would likely be the most straightforward for regulatory compliance since the permit requirement would be the simpler than sub-alternative A2-2a. Thus, NMFS prefers this sub-alternative at this time but is seeking comments,

particularly from the States, about their preferences and what approach would work best in conjunction with their state approach to permitting and state fishery objectives.

NMFS considered two alternatives for Geographic Application of the SCA exception. Under Sub-Alternative A2-3a, the exception would apply along the Atlantic Coast and the Florida west coast in the Gulf of Mexico. As explained earlier, as a practical matter, smooth dogfish and other smoothhound species are indistinguishable. The best available scientific information indicates that smooth dogfish are likely the only smoothhound shark species along the Atlantic coast. In the Gulf of Mexico, however, there are at least three different smoothhound species, with no practical way to distinguish among them. This sub-alternative would apply the smooth dogfish exception 50 nautical miles from the baseline of all the States that fall under the SCA definition of “State.” This sub-alternative could result in other smoothhound sharks indirectly falling under the exception, because they cannot be distinguished from smooth dogfish. NMFS does not expect any impacts from this alternative because there is no commercial fishery for smooth dogfish in the Gulf of Mexico at this time. However, NMFS does not prefer this sub-alternative at this time because, if a fishery does develop, species misidentification could result in enforcement action.

Under Sub-Alternative 3b, the preferred sub-alternative, the exception would only apply along the Atlantic coast and not the Florida west coast in the Gulf of Mexico. By not extending the exception into the Gulf of Mexico, this sub-alternative would ensure that the smooth dogfish fins attached exception would only apply along the Atlantic Coast where the population is almost entirely smooth dogfish, reducing identification problems and inadvertent finning violations. NMFS does not expect any impacts from this alternative because, at this time, there is no

commercial fishery for smooth dogfish in the Gulf of Mexico. NMFS prefers this sub-alternative at this time because it simplifies enforcement and compliance without adverse impacts.

NMFS considered 4 alternatives to the smoothhound quota alternatives. Alternative B1, which would implement the smoothhound shark quota finalized in Amendment 3; Alternative B2, which would establish a rolling quota based on the most recent five years of landings data; Alternative B3, the preferred alternative, which would calculate the smoothhound quota using the same method as in Amendment 3 but would use updated smoothhound landings information; and Alternative B4 which would establish smoothhound shark quotas that reflect any necessary adjustments as a result of the 2014 smoothhound shark stock assessment.

Alternative B1 would implement the quota finalized in Amendment 3 (715.5 mt dw), which was based on the calculation of quotas from a historical period in the fishery (1998 to 2007) and adding two standard deviations. Current reported smoothhound shark landings are higher than the quota level in Alternative B1. As such, implementing this quota would prevent fishermen from fishing at current levels, resulting in lost revenues. In 2011, the most recent year when landings exceeded the Amendment 3 quota, smoothhound shark landings totaled 2,078,251 lb dw (ACCSP data), resulting in revenues across the entire smoothhound shark fishery of \$1,634,337 (2,078,251 lb of meat, 249,390 lb of fins). Implementation of the Amendment 3 quota (715.5 mt dw) would result in ex-vessel revenues of only \$1,240,460 (1,577,391 lb of meat, 189,287 lb of fins), which is \$393,877 less than 2011 ex-vessel revenues. Both of these estimates assume \$1.72/lb for fins, \$0.58/lb for meat based on 2013 HMS dealer data, and a 12 percent fin-to-carass ratio from the SCA. Seventy-six percent of all landings in the smoothhound shark fishery come from sink gillnets, and there are approximately 82 vessels that use sink gillnet gear to fish for smoothhound sharks. Assuming an average of 82 sink gillnet

vessels fishing for smoothhound sharks, the quota in this alternative would result in annual ex-vessel revenues of \$15,128 per vessel, which is less than current ex-vessel revenues of \$19,931 per vessel. This is an average across all directed and incidental sink gillnet vessels and this individual annual vessel ex-vessel revenue may fluctuate based on the degree to which fishermen direct on smoothhound sharks.

The quota in Alternative B1 does not accurately characterize current reported landings of smoothhound sharks. The VTR data for the Northeastern United States shows that an average of 31 vessels between 2002 and 2012 directed on smoothhound shark. These vessels likely fished opportunistically on multiple species of coastal migratory fish and elasmobranchs, and it is unlikely that any sector within the fishing industry in the Northeast (fisherman, dealer, or processor) relies wholly upon smoothhound sharks. Longer-term impacts are expected to be neutral given the small size of the fishery and the generalist nature of the sink gillnet fishery.

Alternative B2 would establish a rolling smoothhound shark quota set above the maximum annual landings for the preceding five years; this quota would be recalculated annually to account for the most recent landing trends within the smoothhound complex (2015 quota would be 1,663 mt dw based on 2009-2013 data). The 2015 quota under this alternative would likely result in annual revenues of \$2,883,139 (3,666,250 lb of meat, 439,950 lb of fins) assuming an ex-vessel price of \$1.72 lb for fins and \$0.58 lb for meat based on 2013 HMS dealer data. Seventy six percent of all landings in the smoothhound shark fishery come from sink gillnets, and there are approximately 82 vessels that use sink gillnet gear to fish for smoothhound sharks. Assuming an average of 82 sink gillnet vessels fishing for smoothhound sharks, the quota in this alternative would result in individual vessel annual revenues of \$35,160, which is more than current ex-vessel revenues of \$19,931 per vessel. This is an average across all directed

and incidental sink gillnet vessels, and this individual annual vessel revenue may fluctuate based on the degree to which fishermen direct on smoothhound sharks.

Per the intent of Amendment 3, smoothhound management measures are designed to characterize and collect data while minimizing changes in catch levels and catch rates in the fishery. This goal necessitates a quota near actual exploitation levels. Thus, setting the quota above current landings levels should allow the fishery to continue, rather than be closed, allowing for NMFS to collect more information that can be used in future stock assessments. Alternative B2 is consistent with the intent of Amendment 3, which was to minimize changes to the fishery while information on catch and participants was collected. Because landings in the smoothhound shark fishery are likely underreported, it is unclear at this time whether the increase in reported landings is due to existing smoothhound fishermen reporting in anticipation of future management or increased effort (e.g., new entrants into the fishery). While a rolling quota would cover all current reporting and likely cover all underreporting of landings, the fishery could grow exponentially if reported landings continue to increase over consecutive years, possibly resulting in stock declines and in turn a potential loss of revenue to the fishing industry. The rolling quota could also lead to lower quotas in consecutive years if landings decrease over time. Thus, the changing nature of the rolling quota could lead to uncertainty in the fishery and could cause direct and indirect minor adverse socioeconomic impacts in the long term.

Alternative B3, the preferred alternative, would create a smoothhound quota equal to the maximum annual landings from 2004-2013 plus two standard deviations, and would equal 1,739.9 mt dw. This alternative establishes a smoothhound quota two standard deviations above the maximum annual landings reported over the last ten years, which is the method used to

calculate the smoothhound shark quota that was finalized in Amendment 3. This quota would result in potential annual revenues in the entire fishery of \$3,016,460 (3,835,784 lb of meat, 460,294 lb of fins) assuming an ex-vessels price of \$1.72 lb for fins and \$0.58 for fins based on 2013 HMS dealer data. Seventy six percent of all landings in the smoothhound shark fishery come from sink gillnets, and there are approximately 82 vessels that use sink gillnet gear to fish for smoothhound sharks. Assuming an average of 82 sink gillnet vessels fishing for smoothhound sharks, the quota proposed in this alternative would result in individual vessel annual revenues of \$36,786. This is an average across all directed and incidental sink gillnet vessels and this individual annual vessel revenue may fluctuate based on the degree to which fishermen direct on smoothhound sharks.

Consistent with the intent of Amendment 3, the preferred alternative B3 would set the quota above current landings levels to allow the fishery to continue throughout the year, rather than be closed for part of the year. This would allow NMFS to collect year-round fishery data that could be used in future smoothhound shark stock assessments. Because landings in the smoothhound fishery are likely underreported, it is unclear at this time whether the increase in reported landings is due to existing smoothhound shark fishermen reporting in anticipation of future management or increased effort. Under this alternative, NMFS anticipates the fishery would operate as it currently does. Alternative B3 accounts for recent trends in the fishery and the best available landings data as recalculated and reported by ACCSP reflects recent behavior in the fishery, and provides an appropriate buffer to account for underreporting in the fishery. Alternative B3 provides for more stability in the fishery due to a quota that does not change from year to year as in alternative B2. Additionally, providing a maximum cap on the fishery would

allow fishermen, dealers, and processors to make better business decisions based on a more predictable yield (assuming that the fishery is fished to near-full capacity each year).

Alternative B4 would implement a smoothhound shark quota consistent with the results of the 2014 smoothhound shark stock assessment, if the results become available before publication of the final rule for this action. For the entire smoothhound shark complex, there are four possible outcomes: 1) one or more of the stocks is found to be overfished but not experiencing overfishing; 2) one or more of the stocks is found to be experiencing overfishing but not yet overfished; 3) one or more of the stocks is found to be overfished and experiencing overfishing; or 4) all stocks are found to not be overfished or experiencing overfishing (healthy). A smoothhound shark quota that is based on the results of a stock assessment would provide short and long-term ecological benefits and the resulting sustainable fishery will ensure long-term socioeconomic benefits for the smoothhound shark fishermen. Unless the stock assessment indicates that current fishing levels are unsustainable, short-term negative socioeconomic impacts are unlikely to result from this alternative. However, the stock assessment is not yet available and NMFS is unsure if it will be available before the final rule for this action publishes. Therefore, NMFS does not prefer this alternative at this time.

In order to implement the TCs of the 2012 Shark BiOp in the smoothhound shark fishery, NMFS considered 4 alternatives. The No Action alternative, which would not implement TC 4 of the 2012 Shark BiOp; C2 which would require smoothhound shark fishermen to conduct net checks at least every 2 hours; C3 which would require smoothhound shark fishermen to limit their gillnet soak time to 24 hours and those smoothhound shark fishermen that also have a Atlantic shark limited access permit to check their nets at least every 2 hours; and C4 which would require smoothhound and Atlantic shark fishermen using sink gillnet to soak their nets no

longer than 24 hours and those fishermen using drift gillnets to check their nets at least every 2 hours.

Alternative C1 would not implement the BiOp term and condition requiring all smoothhound shark permit holders to either check their gillnet gear at least every 2.0 hours, or limit their soak time to no more than 24 hours. This alternative would likely result in short- and long-term neutral direct socioeconomic impacts. Under Alternative C1, smoothhound shark fishermen would continue to fish as they do now and so this alternative would not have economic impacts that differ from the status quo. Similarly, this alternative would likely result in neutral short and long-term indirect socioeconomic impacts since supporting businesses including dealers and bait, tackle, and ice suppliers would not be impacted.

Alternative C2 would require smoothhound shark fishermen using gillnet gear to conduct net checks at least every 2 hours to check for and remove any protected species, and would likely result in short- and long-term direct moderate adverse socioeconomic impacts. Some smoothhound shark gillnet fishermen fish multiple nets at one time or deploy their net(s), leave the vicinity, and return at some later time. Alternative C2 would require these fishermen to check each gillnet at least once every 2 hours, making fishing with multiple nets or leaving nets unattended difficult. This would likely lead to a reduction in effort and landing levels, resulting in lower ex-vessel revenues. Quantifying the loss of income is difficult without information characterizing the fishery, including the number of nets fished. However, limiting the amount of fishing effort in this manner is likely to reduce total landings of smoothhound sharks or, in order to keep landing levels high, extend the length of trips. Landings of incidentally caught fish species could be reduced as well, although under preferred sub-Alternative A2-1c, smoothhound shark fishermen that wish to remove smooth dogfish fins at sea could not retain other species.

This alternative would not have a large impact on supporting businesses such as dealers or bait, tackle, and ice suppliers, since these businesses do not solely rely on the smoothhound shark fishery. The smoothhound shark fishery is small relative to other fisheries. Thus, Alternative C2 would likely result in short- and long-term indirect neutral socioeconomic impacts. Alternative C2 would impact the approximately 31 vessel that annually direct on smoothhound sharks with gillnet gear (annual average from 2003-2013).

Alternative C3 would establish a gillnet soak time limit of 24 hours for smoothhound shark permit holders. Under this alternative, fishermen holding both an Atlantic shark limited access permit and a smoothhound shark permit must abide by the 24 hour soak time restriction and conduct net checks at least every 2 hours. This alternative would likely result in short- and long-term direct minor adverse socioeconomic impacts to those smoothhound permitted fishermen that also have an Atlantic shark limited access permit, and therefore would be required to check their nets at least every 2 hours. Currently, smoothhound shark gillnet fishermen sometimes fish multiple nets or leave nets unattended for short periods of time. Rarely are these nets soaked for more than 24 hours, thus, this alternative would not impact smoothhound shark gillnet fishermen that do not have an Atlantic shark limited access permit. Adverse socioeconomic impacts resulting from this alternative would likely occur to the subset of smoothhound shark fishermen that also hold an Atlantic shark limited access permit. These smoothhound shark fishermen would be at a disadvantage to other smoothhound shark fishermen that do not have an Atlantic shark limited access permit, because they would be required to check their gillnets at least every 2 hours, which is a large change in the way the smoothhound shark fishery currently operates. Dropping the Atlantic shark permit to avoid the net check requirement is not likely feasible, since Atlantic shark permits are limited access and cannot be

easily obtained. Additionally, pelagic longline fishermen are required to have an incidental or directed shark permit when targeting swordfish or tunas, even if they are not fishing for sharks, due to the likelihood of incidental shark catch. In practical terms, this alternative could result in smoothhound shark gillnet fishermen abiding by the 2 hour net check requirement even if they do not fish for Atlantic sharks and only hold a Atlantic shark limited access permit to fish for swordfish or tunas (note that gillnets cannot be used to target swordfish or tunas, but some vessels may switch gears between trips). For this subset of fishermen, basing gillnet requirements on permit types could introduce fishing inefficiencies when compared to other smoothhound fishermen, likely resulting in adverse socioeconomic impacts to these fishermen. It is unlikely that this alternative would have a large impact on supporting businesses such as dealers or bait, tackle, and ice suppliers since these businesses do not solely rely on the smoothhound shark fishery. As noted above, the smoothhound shark fishery is small relative to other fisheries, and it is difficult to determine the number of fishermen that would be adversely affected since NMFS does not yet know which vessels will obtain a smoothhound shark fishing permit. However, it is likely that this number will be approximately 170, which is the average annual number of vessel that retain smoothhound sharks.

Alternative C4, the preferred alternative, would establish a soak time limit of 24 hours for fishermen using sink gillnet gear and a 2 hour net check requirement for fishermen using drift gillnet gear in the Atlantic shark and smoothhound shark fisheries. Drift gillnets would be defined as those that are unattached to the ocean bottom with a float line at the surface. Sink gillnet gear would be defined as those with a weight line that sinks to the ocean bottom, has a submerged float line, and is designed to be fished on or near the bottom. Alternative C4 would likely result in neutral short- and long-term direct socioeconomic impacts. Smoothhound shark

fishermen, who typically use sink gillnets, would be required to limit soak times to 24 hours and as discussed above, this requirement is unlikely to significantly alter smoothhound shark fishing practices. Drift gillnet fishermen, who are more likely to target Atlantic sharks other than smoothhound sharks, would be required to check their nets at least every 2 hours, as is currently required. Thus, this alternative is unlikely to have any socioeconomic impacts to Atlantic shark and smoothhound shark fishermen since it would not change current fishing practices. Similarly, this alternative would likely result in neutral short- and long-term indirect socioeconomic impacts since supporting businesses including dealers and bait, tackle, and ice suppliers should not be impacted. Alternative C4 would impact the approximately 31 vessels that annually direct on smoothhound sharks with gillnet gear. Since Alternative C4 would have minimal economic impact but is still consistent with the 2012 Shark BiOp, NMFS prefers this alternative at this time.

NMFS also considered two alternatives to streamline the current VMS requirements for Atlantic shark fishermen with gillnet gear on board. NMFS considered two alternatives, the No Action alternative that would maintain the current requirement to have VMS on board when fishing for Atlantic sharks with gillnet regardless of where the vessel is fishing, and alternative D2 that would only require VMS on board for Atlantic shark fishermen using gillnet gear in an area specified by the ALWTRP requirements at 50 CFR 229.32.

Alternative D1 would maintain the current requirement that Atlantic shark permit holders fishing with gillnet gear must have VMS on board from November 15- April 15, regardless of where the vessel is fishing. These VMS requirements were put in place as an enforcement tool for complying with the ALWTRP requirements set forth in 50 CFR 229.32. Per 50 CFR 229.32 (h)(2)(i) Atlantic shark gillnet fishermen are only required to have VMS if they are fishing in the

Southeast U.S. Monitoring Area. Purchasing and installing a VMS unit costs fishermen around \$3,500 and monthly data transmission charges cost, on average, approximately \$44.00. Because these monthly costs are currently incurred whenever a shark gillnet fishermen is fishing from November 15- April 15, these costs can affect the fishermen's annual revenues. Although the affected fishermen already have VMS installed, they continue to pay for transmission and maintenance costs, and could need to buy a new unit if theirs fails. NMFS notes that there may be a reimbursement program that would defray part of the purchase cost, but whether that program will exist is not certain at this time. Thus, it is likely that this alternative could have short and long-term direct minor adverse socioeconomic impacts to fishermen due to the cost of purchasing and maintaining a VMS unit. While the retention of sharks in federal waters requires one of two limited access commercial shark permits, these permits do not specify gear type, including gillnets. For this reason, NMFS does not know the exact number of affected shark gillnet fishermen. As of July 11, 2013, there are 216 directed shark and 261 incidental shark permit holders. Logbook records indicate that there are usually about 10 Atlantic shark directed permit holders that use gillnet gear in any year. However, the universe of directed permit holders using gillnet gear can change from year to year and could include anyone who holds an Atlantic shark directed permit.

Alternative D2, the preferred alternative, would change the gillnet VMS requirements to require federal directed shark permit holders with gillnet gear on board to use VMS only in the vicinity of the Southeast U.S. Monitoring Area, pursuant to ALWTRP requirements. This alternative would have short- and long-term direct minor beneficial socioeconomic impacts. Atlantic shark gillnet fishermen fishing in the vicinity of the Southeast U.S Monitoring Area would still incur the installation costs of the VMS, but data transmission would be limited to

those times when the vessel is in this area. Furthermore, shark gillnet fishermen outside of this area that do not fish in the vicinity of the Southeast U.S Monitoring Area would not need to install a VMS unit or, if they already have one, maintain the VMS unit or replace a malfunctioning one. Thus, the socioeconomic impacts from this alternative, while still adverse, are of a lesser degree than those under Alternative D1, the No Action alternative. This alternative would likely result in neutral short- and long-term indirect socioeconomic impacts, since supporting businesses including dealers and bait, tackle, and ice suppliers would not be impacted. As noted in the other alternatives discussions, NMFS does not know the exact number of shark gillnet fishermen that would be affected by this alternative. As of July 11, 2013, there are 216 directed shark and 261 incidental shark permit holders. Logbook records indicate that there are usually about 10 Atlantic shark directed permit holders that use gillnet gear in any year. However, the universe of directed permit holders using gillnet gear can change from year to year and could include anyone who holds an Atlantic shark directed permit. Since this alternative is more in line with the requirements of the ALWTRP, and because it would reduce socioeconomic impacts while still maintaining beneficial ecological impacts for protected whale species, NMFS prefers this alternative at this time.

List of Subjects in 50 CFR Part 635

Fisheries, Fishing, Fishing vessels, Penalties, Reporting and recordkeeping requirements, Retention limits.

Dated: August 1, 2014

Samuel D. Rauch III,

Deputy Assistant Administrator for Regulatory Programs,

National Marine Fisheries Service.

For reasons set out in the preamble, 50 CFR part 635 is proposed to be amended as follows:

PART 635-ATLANTIC HIGHLY MIGRATORY SPECIES

1. The authority citation for part 635 continues to read as follows:

Authority: 16 U.S.C. 971 et seq.; 16 U.S.C. 1801 et seq.

2. In § 635.2, definitions for “Atlantic States,” “Drift gillnet,” “Sink gillnet,” and “Smoothhound shark” are added in alphabetical order to read as follows:

§ 635.2 Definitions.

* * * * *

Atlantic States, consistent with section 803 of Public law 103-206 (16 U.S.C. § 5102), refers to Maine, New Hampshire, Massachusetts, Rhode Island, Connecticut, New York, New Jersey, Pennsylvania, Delaware, Maryland, Virginia, North Carolina, South Carolina, Georgia,

Florida, the District of Columbia, and the Potomac River Fisheries Commission, for purposes of applying the Shark Conservation Act exception at 50 CFR 635.30(c)(5).

* * * * *

Drift gillnet means a gillnet that is unattached to the ocean bottom and not anchored, secured or weighted to the ocean bottom.

* * * * *

Sink gillnet means a gillnet that is designed to be or is fished on or near the bottom in the lower third of the water column by means of a weight line or enough weights and anchors that the bottom of the gillnet sinks to, on, or near the ocean bottom.

* * * * *

Smoothhound shark(s) means one of the species, or part thereof, listed in section E of table 1 in appendix A to this part

* * * * *

3. In § 635.4, paragraphs (e)(4) and (m)(2) are revised to read as follows:

§ 635.4 Permits and fees.

* * * * *

(e) * * *

(4) Owners of vessels that fish for, take, retain, or possess the Atlantic oceanic sharks listed in section E of Table 1 of Appendix A with an intention to sell must obtain a Federal

commercial smoothhound permit. A Federal commercial smoothhound permit may be issued to a vessel alone or to a vessel that also holds either a Federal Atlantic commercial shark directed or incidental limited access permit.

* * * * *

(m) * * *

(2) Shark and swordfish permits. A vessel owner must obtain the applicable limited access permit(s) issued pursuant to the requirements in paragraphs (e) and (f) of this section and/or a Federal commercial smoothhound permit issued under paragraph (e) of this section; or an HMS Commercial Caribbean Small Boat permit issued under paragraph (o) of this section, if: the vessel is used to fish for or take sharks commercially from the management unit; sharks from the management unit are retained or possessed on the vessel with an intention to sell; or sharks from the management unit are sold from the vessel. A vessel owner must obtain the applicable limited access permit(s) issued pursuant to the requirements in paragraphs (e) and (f) of this section, a Swordfish General Commercial permit issued under paragraph (f) of this section, an Incidental HMS Squid Trawl permit issued under paragraph (n) of this section, an HMS Commercial Caribbean Small Boat permit issued under paragraph (o) of this section, or an HMS Charter/Headboat permit issued under paragraph (b) of this section, which authorizes a Charter/Headboat to fish commercially for swordfish on a non for-hire trip subject to the retention limits at § 635.24(b)(4) if: the vessel is used to fish for or take swordfish commercially from the management unit; swordfish from the management unit are retained or possessed on the vessel with an intention to sell; or swordfish from the management unit are sold from the vessel. The commercial retention and sale of swordfish from vessels issued an HMS Charter/Headboat permit is permissible only when the vessel is on a non for-hire trip. Only persons holding non-

expired shark and swordfish limited access permit(s) in the preceding year are eligible to renew those limited access permit(s). Transferors may not renew limited access permits that have been transferred according to the procedures in paragraph (l) of this section.

* * * * *

4. In § 635.7, paragraph (a) is revised and paragraph (g) is added to read as follows:

§ 635.7 At-sea observer coverage.

(a) Applicability. NMFS may select for at-sea observer coverage any vessel that has an Atlantic HMS, tunas, shark or swordfish permit issued under § 635.4 or § 635.32. Vessels permitted in the HMS Charter/Headboat and Angling categories will be requested to take observers on a voluntary basis. When selected, vessels issued any other permit under § 635.4 or § 635.32 are required to take observers on a mandatory basis. Requirements for selection, notification, and assignment of observers for vessels that have been issued Federal commercial smoothhound permits are set forth in paragraph (g) of this section.

* * * * *

(g) Selection, Notification, and Assignment of Observers for Commercial Smoothhound Vessels. (1) NMFS may request any vessel issued a Federal commercial smoothhound shark permit to carry a NMFS-approved observer.

(2) If requested to carry an observer, it is the responsibility of the vessel owner to arrange for and facilitate observer placements. Owners of vessels selected for observer coverage must notify NMFS, at an address specified by NMFS, before commencing any fishing trip that may result in the harvest of smoothhound sharks. Notification procedures are set forth in paragraph (4) below.

(3) NMFS may waive the requirement to carry an observer if an observer is not available for placement or if the facilities on a vessel for housing the observer, or for carrying out observer functions, are so inadequate or unsafe that the health or safety of the observer, or the safe operation of the vessel, would be jeopardized.

(4) A vessel issued a Federal smoothhound permit may not begin a fishing trip without providing notice as required under this paragraph and receiving an observer notification or waiver pursuant to paragraph (g)(5) of this section. Unless otherwise notified by NMFS, at least 48 hours prior to departing port on any trip, the owner or operator of a vessel issued a Federal smoothhound permit must provide notice to NMFS at an address specified by NMFS of the vessel name and permit number; contact name and telephone number for coordination of observer deployment; date, time, and port of departure; and the vessel's trip plan, including area to be fished and gear type to be used. For trips lasting 48 hours or less from the time the vessel leaves port to begin a fishing trip until the time the vessel returns to port upon the completion of the fishing trip, the vessel owner or operator may make a weekly notification rather than trip-by-trip calls. For weekly notifications, a vessel owner or operator must notify NMFS at an address specified by NMFS by 1 A.M. of the Friday preceding the week (Sunday through Saturday) that it intends to complete at least one smoothhound trip during the following week and provide the date, time, port of departure, area to be fished, and gear type to be used for each trip during that week. Such weekly notifications must be made no more than 10 days in advance of each fishing trip. The vessel owner or operator must notify NMFS of any trip plan changes at least 24 hours prior to vessel departure from port.

(5) Within 24 hours of a notice made under paragraph (g)(4) of this section, NMFS will notify the vessel owner or operator via the information provided by the vessel owner or operator,

whether the vessel must carry an observer or if a waiver has been granted pursuant to paragraph (g)(3) of this section. All trip notifications shall be issued a unique confirmation number. A vessel may not fish on a smoothhound shark trip with an observer waiver confirmation number that does not match the trip plan that was provided to NMFS, pursuant to paragraph (g)(4) of this section. Confirmation numbers for trip notification calls are valid for 48 hours from the intended sail date. If a trip is interrupted and returns to port due to bad weather or other circumstance beyond the owner's or operator's control, and goes back out within 48 hours, the same confirmation number and observer status remains. If the layover time is greater than 48 hours, a new trip notification must be made by the operator or owner of the vessel.

5. In § 635.20, paragraph (e)(4) is revised to read as follows

§ 635.20 Size limits.

* * * * *

(e) * * *

(4) There is no size limit for smoothhound sharks taken under the recreational retention limits specified at § 635.22(c)(6).

* * * * *

6. In § 635.21, paragraphs (g)(2) and (3), as proposed to be amended at 78 FR 52032, August 21, 2013, are further revised to read as follows:

§ 635.21 Gear operation and deployment restrictions.

* * * * *

(g) * * *

(2) While fishing with a drift gillnet, a vessel issued or required to be issued a Federal Atlantic commercial shark limited access permit and/or a Federal commercial smoothhound permit must conduct net checks at least every 2 hours to look for and remove any sea turtles, marine mammals, Atlantic sturgeon, or smalltooth sawfish, and the drift gillnet must remain attached to at least one vessel at one end, except during net checks. Smalltooth sawfish must not be removed from the water while being removed from the net.

(3) While fishing with a sink gillnet, vessels issued or required to be issued a Federal Atlantic commercial shark limited access permit and/or a Federal commercial smoothhound permit must limit the soak time of the sink gillnet gear to 24 hours, measured from the time the sink gillnet first enters the water to the time it is completely removed from the water.

* * * * *

7. In § 635.22, paragraph (c)(6) is revised to read as follows:

§ 635.22 Recreational retention limits.

* * * * *

(c) * * *

(6) The smoothhound sharks listed in Section E of Table 1 of Appendix A to this part may be retained and are subject only to the size limits described in § 635.20(e)(4).

* * * * *

8. In § 635.24, paragraph (a)(7) is revised to read as follows:

§ 635.24 Commercial retention limits for sharks, swordfish, and BAYS tunas.

* * * * *

(a) * * *

(7) A person who owns or operates a vessel that has been issued a Federal commercial smoothhound permit may retain, possess, and land smoothhound sharks if the smoothhound fishery is open in accordance with §§ 635.27 and 635.28. Persons aboard a vessel in a trawl fishery that has been issued a Federal commercial smoothhound permit and are in compliance with all other applicable regulations, may retain, possess, land, or sell incidentally-caught smoothhound sharks, but only up to an amount that does not exceed 25 percent, by weight, of the total catch on board and/or offloaded from the vessel. A vessel is in a trawl fishery when it has no commercial fishing gear other than trawls on board and when smoothhound sharks constitute no more than 25 percent by weight of the total catch on board or offloaded from the vessel.

* * * * *

9. In § 635.27, paragraphs (b)(1)(xi) and (b)(4)(iv) are added and read as follows:

§ 635.27 Quotas.

* * * * *

(b) * * *

(1) * * *

(xi) Smoothhound sharks. The base annual commercial quota for smoothhound sharks is 1782.2 mt dw.

* * * * *

(4) * * *

(iv) The base annual quota for persons who collect smoothhound sharks under a display permit or EFP is 6 mt ww (4.3 mt dw).

* * * * *

10. In § 635.30, paragraph (c) is revised to read as follows:

§ 635.30 Possession at sea and landing.

* * * * *

(c) Shark. (1) In addition to the regulations issued at part 600, subpart N, of this chapter, a person who owns or operates a vessel issued a Federal Atlantic commercial shark permit under § 635.4 must maintain all the shark fins including the tail naturally attached to the shark carcass until the shark has been offloaded from the vessel, except for under the conditions specified in § 635.30(c)(5). While sharks are on board and when sharks are being offloaded, persons issued a Federal Atlantic commercial shark permit under § 635.4 are subject to the regulations at part 600, subpart N, of this chapter.

(2) A person who owns or operates a vessel that has a valid Federal Atlantic commercial shark permit may remove the head and viscera of the shark while on board the vessel. At any time when on the vessel, sharks must not have the backbone removed and must not be halved, quartered, filleted, or otherwise reduced. All fins, including the tail, must remain naturally attached to the shark through offloading, except under the conditions specified for smooth dogfish in paragraph (c)(5) of this section. While on the vessel, fins may be sliced so that the fin can be folded along the carcass for storage purposes as long as the fin remains naturally attached to the carcass via at least a small portion of uncut skin. The fins and tail may only be removed

from the carcass once the shark has been landed and offloaded, except under the conditions specified in paragraph (c)(5) of this section.

(3) A person who owns or operates a vessel that has been issued a Federal Atlantic commercial shark permit and who lands sharks in an Atlantic coastal port, including ports in the Gulf of Mexico and Caribbean Sea, must have all fins and carcasses weighed and recorded on the weighout slips specified in § 635.5(a)(2) and in accordance with part 600, subpart N, of this chapter. Persons may not possess any shark fins not naturally attached to a shark carcass on board a fishing vessel at any time, except under the conditions specified in paragraph (c)(5) of this section. Once landed and offloaded, sharks that have been halved, quartered, filleted, cut up, or reduced in any manner may not be brought back on board a vessel that has been or should have been issued a Federal Atlantic commercial shark permit.

(4) Persons aboard a vessel that does not have a Federal Atlantic commercial shark permit must maintain a shark intact through landing with the head, tail, and all fins naturally attached, except under the conditions specified in paragraph (c)(5) of this section. The shark may be bled and the viscera may be removed.

(5) A person who owns or operates a vessel that has been issued or is required to be issued a Federal commercial smoothhound permit may remove the fins and tail of a smooth dogfish shark prior to offloading if the conditions in paragraphs (c)(5)(i) through (iv) of this section have been met. If the conditions in paragraphs (c)(5)(i) through (iv) have not been met, all fins, including the tail, must remain naturally attached to the smooth dogfish through offloading from the vessel:

(i) The smooth dogfish was caught within waters of the United States located shoreward of a line drawn in such a manner that each point on it is 50 nautical miles from the baseline of an Atlantic State, from which the territorial sea is measured, from Maine south through Florida to the Atlantic and Gulf of Mexico shark regional boundary defined in § 635.27(b)(1).

(ii) The vessel has been issued both a Federal commercial smoothhound permit and a valid State commercial fishing permit that allows for fishing for smooth dogfish.

(iii) Smooth dogfish make up at least 75 percent of the retained catch on board, and no other shark species are retained.

(iv) Total weight of the smooth dogfish fins landed or found on board a vessel cannot exceed 12 percent of the total dressed weight of smooth dogfish carcasses on board or landed from the fishing vessel.

* * * * *

11. In § 635.69, paragraph (a)(3) is revised to read as follows:

§ 635.69 Vessel monitoring systems.

* * * * *

(a) * * *

(3) Pursuant to Atlantic large whale take reduction plan requirements at 50 CFR 229.32(h), whenever a vessel issued a directed shark LAP has a gillnet(s) on board.

* * * * *

12. In § 635.71, paragraphs (d)(6), (d)(7), and (d)(18) are revised to read as follows

§ 635.71 Prohibitions.

* * * * *

(d) * * *

(6) Fail to maintain a shark in its proper form, as specified in § 635.30(c). Fail to maintain naturally attached shark fins through offloading as specified in § 635.30(c), except for under the conditions specified in § 635.30(c)(5).

(7) Sell or purchase smooth dogfish fins that are disproportionate to the weight of smooth dogfish carcasses, as specified in § 635.30(c)(5).

* * * * *

(18) Retain or possess on board a vessel in the trawl fishery smoothhound sharks in an amount that exceeds 25 percent, by weight, of the total fish on board or offloaded from the vessel, as specified at § 635.24(a)(7).

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13. In appendix A to part 635, section E of table 1 is revised to read as follows:

Appendix A to Part 635—Species Tables

Table 1 of Appendix A to Part 635—Oceanic Sharks

* * * * *

E. Smoothhound Sharks

Smooth dogfish, Mustelus canis

Florida smoothhound, Mustelus norrisi

Gulf smoothhound, Mustelus sinusmexicanus

Mustelus species

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